



**Ninety-Seventh Legislature - First Session - 2001**  
**Committee Statement**  
**LB 600**

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**Hearing Date:** February 8, 2001

**Committee On:** Revenue

**Introducers:** (Coordsen, Baker, Bromm, Burling, Connealy, Cunningham, Dierks, Erdman, Janssen, Jones, Kremer, Raikes, Schrock, Smith, Stuhr, Vrtiska)

**Title:** Change agricultural and horticultural land valuation provisions

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

6	Yes	Senators Coordsen, Dierks, Hartnett, Janssen, Redfield and Wickersham
1	No	Senator Landis
1	Present, not voting	Senator Raikes
0	Absent	

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**Proponents:**

Senator George Coordsen  
Dave Kadlec  
John Moore

Jim Erickson  
Greg Ruehle  
John K. Hansen  
Kurt Yost  
Loran Schmit

**Representing:**

Introducer  
Himself  
Dawson County Assessor, NACO and Greenbelt Task Force  
Nebraska Farm Bureau Federation  
Nebraska Cattlemen  
Nebraska Farmers Union  
Nebraska Independent Community Bankers  
Himself

**Opponents:**

None

**Representing:**

**Neutral:**

Ken Stuhr  
Bruce Johnson

**Representing:**

York Area 5 Ag Land Board  
Himself

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## **Summary of purpose and/or changes:**

LB 600 would repeal the 80 percent preference for ag use valuation and create an income capitalization method of valuation. The method would use market derived capitalization rates to calculate value by capitalizing cash rent or crop share income amounts. The Property Tax Administrator and locally elected county assessors would be responsible for analysis of the income and appropriate capitalization rates based on local conditions and markets.

Section 1- Intent section that repeats the language of the Nebraska Constitution regarding uniformity of valuation of property and the exception granted for agricultural land. Additional language on counties and zoning changes is added to state law.

Section 2 amends existing language that provides for using professionally accepted mass appraisal methods for all classes of property. It mandates the use of an income capitalization approach to valuation of agricultural land.

Section 3 repeals an existing reference to the 80 percent actual value standard and mandates uniformity and proportionate treatment of all land within the class of agricultural land.

Section 4 modifies existing greenbelt language to provide that the recapture valuation shall be the actual valuation as calculated under the income capitalization approach authorized as the only method of valuing agricultural land.

Strikes the word “predominately” in references to greenbelt designation of agricultural use, and inserts “primarily” for agricultural and horticultural use.

Section 5 revises various definitions in the greenbelt provisions, including adding a definition of accretion land. This section adds new language that would allow agricultural land that is within city boundaries to be assessed as greenbelt special use valuation land. It also adds new criteria for greenbelt designation which would allow incidental use of agricultural land for non agricultural purposes without risking the loss of the special use valuation designation. Additional new language requires assessing officials to determine whether non-agricultural or residential uses are taking place on a site and assess them according to methods for assessing that type of property. The definition of agricultural products is modified to include horticultural products, including the raising of ornamental flowers and plants. Animal units are defined, along with term animal unit months. A definition of capitalized net income approach is provided by citing the new provisions of the act, along with a similar definition of income capitalization methodology in a later section. Grassland is defined, along with wasteland, later in that same section. Soil classifications are defined as those developed by the USDA.

A definition of land devoted primarily to agricultural use is qualified by the term mainly for agricultural or horticultural use, and requires assessing officials to classify such land based on physical evidence from the prior crop year. Owners may be required to provide documentation of agricultural use if physical evidence is not sufficient. Assessing officials must designate the use on the assessment rolls as provided under 77-1315.

A definition of what is NOT agricultural land is included. It excludes from agricultural assessment classification any home sites, except that farm-building sites are to be assessed in the same manner as other agricultural land. A primary use criteria is established for assessing officials which suggests that assessing officials must judge whether recreational or residential use is the primary use of the land. Assessing officials must determine whether agricultural use valuation designation can be obtained by production or maintenance of any plants or animals in sufficient quantity to constitute the primary use, versus a secondary use for recreational or residential purposes. A farm site containing an agricultural building located contiguous to any land actively devoted to agriculture may continue to qualify as agricultural land.

A period of disqualification from agricultural land assessment eligibility is established which coincides with the county board of equalization protest period. Disqualification from agricultural use valuation after the end of the annual disqualification period would allow the land to remain in agricultural use valuation status until the following assessment period.

Other definitions of landowner share basis of income methodology are offered which may be either cash rent or crop share. Management fees are defined and require a survey by the Property Tax Administrator to reflect current management fees. Wasteland is redefined.

Section 6 adds several other new definitions of agricultural and horticultural land, and begins by striking the term solely from the current law and inserting primarily, which is consistent with the other revised definitions found in the act. A principle of uniformity and proportionality between classes and subclasses is statutorily established here. Some sub classes are defined, including small parcels which may be assessed as agricultural land if certain criteria are met. A principle of proof of personal use disqualification is established.

Section 7 establishes principles of using soil productivity ratings for valuation, income earnings methods, and county level or crop reporting district calculations. This section defines gross receipts in the income approach to include only crop prices and income, which may exclude other forms of income in the analysis of the economic return to ownership of land. It also establishes a principle of using three-year averages in analysis of income.

Section 8 directs the Property Tax Administrator to establish capitalization rates annually, and issue rules and regulations for establishing capitalization rates.

Section 9 establishes the right of county assessing officials to modify land classifications to fit county productivity and rental arrangements, and requires the Property Tax Administrator to review county decisions to secure uniformity and proportionality in the immediate and adjoining counties.

Section 10 establishes the band of investment method for determining a market derived capitalization rate based on nationally recommended standards. This section directs the Property Tax Administrator to determine the acceptability of sources of capitalization rate information and directs that management costs be included as a component in the capitalization rate.

Section 11 establishes the principle of recalculation of prior tax liability for land that becomes disqualified for agricultural use valuation at any point by change of use. Interest is calculated at six percent on back taxes owed.

Section 12 strikes one criteria from the sales file analysis statute involving sales of agricultural land.

Section 13 modifies the equalization statute to reflect the change to assessment at 100 percent of actual value.

Section 14 strikes references in the school aid adjusted value statutes to the existing 80 percent ag use preference standard and inserts 100 percent of actual value.

Section 15 establishes an operative date of January 1, 2002.

Section 16 repeals original language.

**Explanation of amendments, if any:**

The Committee amendments totally rewrite the bill although the primary focus would be retained. Significant changes from the green copy of the bill are provisions that require a return to assessment at 80 percent of actual value if there is a final determination that the bill is unconstitutional, a restored ability of the Tax Equalization and Review Commission to adjust income and expense information to achieve uniformity, and a delayed effective date to January 1, 2003.

Section by section summary:

Section 1 is an intent section. It declares that encouragement and support of agriculture is a rational state policy and that basing taxable value on production capabilities furthers that policy. Such valuation policy is supported by the Nebraska Constitution Art. VIII Sec. 1(4) and (5).

Sections 2 and 3 would amend sections 19-2428 and 37-335 to provide that agricultural land is assessed under either the current system or under LB 600.

Section 4 would amend section 77-201 to provide that agricultural and horticultural land be assessed at 80 percent of actual value through December 31, 2002. Beginning in 2003, ag land shall be assessed at its agricultural and horticultural use value. However, if any portion of sections 5 to 16 of this act are finally adjudicated to be unconstitutional, all of these sections are void and ag land is to be assessed at 80 percent of market value.

Section 5 contains most of the definitions in the act, including the following:

- a. Category means the purpose for which the land is used. Categories include irrigated cropland, dryland cropland, grass, etc.
- b. Farm site means a portion of land contiguous with and used in connection with ag land that has agricultural improvements.

- c. Land subclasses mean the classes developed from soil types.
- d. Landowner expense means the three-year average of expenses for that category and land subclass. They include property taxes, management fees, repairs to improvements, and irrigation expenses.
- e. Recapture amount means the amount of obligation of a landowner that changes use from agricultural and horticultural use to something else.
- f. Wasteland means land lying contiguous to and in common ownership with ag land, that is not suitable for producing income, and
- g. Zoned means a designation of land for particular purposes.

Section 6 defines agricultural and horticultural land to mean land that is not zoned for another purpose and which is used for producing agricultural products. Land retained with an agricultural easement or enrolled in a federal preservation program is agricultural land. An unimproved parcel of ten acres or less is ag land only if it is used as part of an income producing agricultural enterprise or is under an easement or preservation program. Farm sites and wasteland is agricultural land.

Section 7 provides that eligibility for ag use valuation is determined on January 1, but can be disqualified at any time until the levy date. Land within city limits that is subject to a preservation easement may qualify for ag use valuation. The value shall be subject to equalization by the county board and TERC. However, references to AHLVBs are struck.

Section 8 provides that ag use valuation continues until written notification that the land is no longer in ag use, a sale or transfer that makes it exempt from taxation, a change in zoning that prohibits ag use, annexation unless covered by a preservation easement, or a change in use to a nonagricultural use.

Section 9 provides that the agricultural and horticultural land class be divided into categories such as irrigated cropland, and grassland. Categories are to be further divided into land subclasses based on soil type. Land enrolled in a federal or state program to take land out of production shall be classified based on its use prior to its enrollment.

Section 10 provides that it is county assessors that are to classify the land based on soil surveys and productivity. Assessors have the authority to adjust or create land subclasses based upon unique characteristics when such classification is necessary to achieve uniform and proportionate valuations. They may also appoint a three member advisory committee to help. County assessors may also adjust valuations to assure uniform and proportionate valuations within the county and correlation with other similar property in adjoining counties. If the physical evidence about whether or not the land is agricultural or horticultural land is insufficient, the assessor may request that the owner provide other evidence.

Section 11 - Agricultural and horticultural land is to be valued based on its category, class and subclass and its average productivity capitalized at the rate provided in section 14. Productivity is to be determined based on information for each land subclass based on soil type as published by the U.S. Department of Agriculture. Average cropping patterns are to be determined by the Property Tax Administrator after consultation with the Agricultural Land Use Advisory Committee.

For cropland, the productivity is determined by subtracting the three-year average landowner expenses from the three-year average gross receipts for each land subclass, including federal agricultural support payments as supplied by the U.S. Department of Agriculture. Crop share or cash rental information is used. For grassland, the landowner expenses are subtracted from gross receipts for each land subclass based on three-year average carrying capacity in animal units based on soil type. Cash rental may be used where there is insufficient animal unit information.

The land portion of a farm site is to be assessed at the same value as the average of all agricultural and horticultural land in the county. Wasteland shall be assessed at the lowest value of any classification in the county.

Section 12 provides that the value is determined by subtracting landowner expenses from gross receipts and multiplying the result by the capitalization rate in section 14.

Section 13 provides that the Property Tax Administrator has rule and regulation making authority over the provisions of this act with the advice of the Agricultural and Horticultural Land Use Advisory Committee. The Property Tax Administrator also has authority to determine methodology used to determine the gross receipts and landowner expenses for feedlots, orchards, nurseries and other categories of use. Finally, the P.T.A. has authority to review the factors that recognize geographic differences to assure uniform and proportionate valuations.

Section 14 sets the capitalization rate at eight percent.

Section 15 provides that if land that has been valued using the agricultural and horticultural use value system changes use, recapture ensues. The recapture amount is equal to the amount the additional taxes would have been if the land were valued at actual value in the current year times three if the recapture obligation occurs before the levy date (and therefore the value is increased for the current year) and times four if the change occurs later in the tax year. The recapture amount is to be collected as if it were property tax and distributed to local governments in proportion to the levies. If the land is acquired through eminent domain, or could have been so acquired, there is no recapture responsibility.

The owner has a duty to report any disqualification from agricultural and horticultural use valuation within sixty days of the event that disqualifies the land. If the recapture is due to the sale of the land, a lien is to attach to the land. Failure to report results in a penalty of five percent of the recapture amount for each 30-day period after the sixty day period that the owner does not report, not to exceed 25 percent of the recapture amount. If the recapture amount is not paid within 60 days after the notice of recapture from the county assessor, interest begins to accrue at the delinquent property tax rate (14 percent). The county board may waive any penalty for good cause shown.

The recapture amount and any penalty and interest may be appealed according to the TERC Act. The recapture amount, plus any penalties and interest constitutes a lien against the property.

Section 16 creates the Agricultural Land Use Advisory Committee to advise and assist the Property Tax Administrator in developing uniform and proportionate valuation of agricultural and horticultural land. There are to be seven members, appointed by the Governor. Three have

an initial term of two years but all terms would be four years thereafter. The Advisory Committee is to have as members two active farmers, one active rancher, an economics professor at the University of Nebraska IANR, an elected county assessor, an elected county board member that has served on an AHLVB board and a county attorney or deputy county attorney from a county with a population less than 100,000. Members are to elect a chairperson from among themselves, meet at least once per year, and receive actual and necessary expenses.

The Advisory Committee is to develop recommendations for the income and expense information and evaluate typical leasing arrangements, evaluate proposed rules and regulations of the DPAT, and recommend amendments to this act. The Property Tax Administrator is to provide administrative support so long as it does not interfere with other operations of the Department.

Section 17 would amend section 77-5023, which deals with the responsibility of the Tax Equalization and Review Commission for intercounty equalization. It provides that beginning January 1, 2003, nonagricultural land would continue to be adjusted to the midpoint, or 96 percent of actual value while with regard to agricultural and horticultural land, the TERC shall have the authority to adjust the gross receipts and landowner expense information in the county or parts of the county to achieve equalization. If this act is finally adjudicated to be unconstitutional, ag land is to again be adjusted to 77 percent of actual value to be equalized.

Beginning January 1, 2003, the acceptable range for nonagricultural land would continue to be 92 percent to 100 percent of actual value, while there would be no range for agricultural and horticultural land. If the act is finally adjudicated to be unconstitutional, the range for ag land would return to 74 percent to 80 percent of actual value.

Section 18 would amend section 70-1016 to provide that beginning January 1, 2004, school adjusted value shall be the agricultural and horticultural use value, but if the act is ruled unconstitutional, 80 percent of actual value.

Section 19 provides that the act be operative January 1, 2003, except that the provisions dealing with the advisory board would be operative August 1, 2002.

Section 20 repeals the original sections, and

Section 21 repeals section 77-1355 outright effective August 1, 2002. This section creates the current Greenbelt Advisory Committee. No other sections dealing with the assessment of agricultural and horticultural land are to be repealed by the amendment.

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**Senator William R. Wickersham, Chairperson**